

Appl. No. : 09/821,371  
Filed : March 29, 2001

## COMMENTS

### Status of Claims

Claims 1-55 are presently pending in this reissue application. Claims 1-15 correspond to Claims 1-15 of U.S. Patent No. 5,890,128 for which reissue is sought and Claims 16-55 were added in the reissue application. Claims 1, 3-12, and 16-55 stand rejected, Claims 2 and 13 are objected to and Claim 15 is allowed.

As required by C.F.R. §1.173, the changes to the claims are indicated, with respect to the original application upon which the reissue is based, by underlined text for additions and bracketed text for deletion. In this amendment, Applicant has amended Claims 1-6, 16, 36, 40 and 55 and added new Claims 56-86. Claims 17, 18, 29, 41, 42 and 49 have been canceled.

### 1. Matters of Form

#### The Drawings

The drawings are objected to as not showing the subject matter of “claims 33 & 52 in regard to using a graphical format.” However, this feature is clearly shown by reference number “200” in Figures 3 and 12B. Thus, Applicant respectfully requests that the objection to the drawings be withdrawn.

#### The Abstract

The Examiner objected to the Abstract as not being on a separate sheet. C.F.R. §1.52(b)(4) states that the “abstract must commence on a separate sheet or be submitted as the first page of the patent in a reissue application.” As such, Applicant respectfully submits that the

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objection to the Abstract be withdrawn. Nevertheless, Applicants have included with this Amendment an Abstract on a separate piece sheet.

The Claims

Claims 3-6 and 8 are rejected under 35 U.S.C. § 112 as being indefinite for failing to “particularly point out and claim distinctly claim the subject matter which applicant regards as the invention.” Specifically, the Examiner has objected to the use of “coprocessor” and “predetermined said user personal data” because they are not recited in Claim 1. However, Applicant respectfully notes that “coprocessor” is recited in Claim 1 in the element labeled “(b)”. With respect to “predetermined said user personal data”, Applicant has amended Claims 1, 3-6 and 8 to correct this informality. Applicant has also made additional amendments to Claims 1-8 to correct additional informalities noted by the Applicant. These amendments do not add new matter and entry of the amendments is respectfully requested.

2. The Reissue Oath/Declaration is Not Defective.

The Examiner has objected to the reissue declaration because “the reissue declaration fails to set forth at least one error as required by 37 CFR § 1.175(a)(1). Applicant respectfully submits that the reissue oath/declaration filed with this application is not defective. The oath/declaration identifies at least one error by stating that the ‘128 patent “claims less than [Applicants] had a right to claim.”’ In addition, the declaration states that “the insufficiency in the claims resides in the failure to present claims” directed to the invention as recited in new Claims 15 and 40. As stated in the MPEP, one of the most common bases for filing a reissue application is that “the claims are too narrow or too broad.” MPEP §1402. By setting forth Claims 16 and 40, Applicant has clearly pointed out the errors in original Claims 1-35.

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However, to advance prosecution and in view of changes in the claims made by this Amendment, Applicant is providing a supplemental Declaration, which should address the informalities noted by the Examiner. Specifically, this Declaration sets forth additional details regarding the errors in the '128 patent.

3. Claims 1-15

Claims 1, 3-12 and 14 stand rejected as anticipated by U.S. Patent No. 5,704,350 (herein "Williams"). The Examiner has indicated that Claims 2 and 13 contain patentable subject matter and that these claims would be allowable if rewritten into independent form. Claim 15 has been allowed.

Applicant respectfully traverses the rejection of Claims 1, 3-12 and 14. As the Examiner knows, an anticipation rejection under Section 102(b) is proper only if a single reference shows every element of the claim, arranged as in the claim. MPEP §2131. However, Claim 1 recites a "a receiving means in said computer case electronically connected to said processor to monitor/store signals from a plurality of exercise activity measurement transmitting devices.". Williams does not disclose an interactive personal nutrition and management tool computing device with, among other things, the above noted limitation. Moreover, it would not have been obvious to add such a feature to the device disclosed in Williams.

Claims 2-14 are also in condition for allowance because they depend upon allowable Claim 1 and contain their own patentable subject matter. For example, as indicated above, the Examiner has indicated that Claims 2 and 13 contain patentable subject matter.

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4. Claims 16-55.

Claims 16-35 and 37-54 also stand rejected as anticipated by Williams. The Examiner has indicated that Claims 36 and 55 contain patentable subject matter and that these claims would be in condition for allowance if rewritten into independent form. By this amendment, Claims 36 and 55 have been rewritten into independent form and thus are in condition for allowance.

With respect to Claims 16-35 and 37-54, Applicant respectfully traverses the rejection of these claims. Nevertheless, to advance prosecution of this case, Applicant has decided to amend these Claims. Applicant reserves the right to pursue these claims in their original form in one or more continuing applications.

As amended, Claim 16 now recites, in part, an interactive personal nutrition and exercise management tool computing device comprising "a receiver configured for receiving wireless information from an exercise device." In a similar manner, Claim 40 now recites a method for tracking nutrition consumed by a user and nutrient burned by the user comprising receiving additional exercise data from a wireless signal from an exercise device." Williams does not disclose an interactive personal nutrition and management tool computing device with, among other things, the above noted limitations.

Claims 17-35 and 37-39 are also in condition for allowance because they depend upon allowable Claim 16 and recite additional patentable subject matter. In a similar manner, Claims 41-54 are also in condition for allowance because they depend upon allowable Claim 40 and recite additional patentable subject matter

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### 5. Recapture

The Examiner rejected Claims 16-55 “as being a broadened claimed subject matter surrendered in the application for which the present reissue is based.” More specifically, the Examiner believes that Claims 16 and 40 do not limit the selection of nutrition data and exercise data to using menus as “required by the amendments to original claims 1 & 15.” Applicant respectfully traverses this rejection. Nevertheless, Applicant has chosen to amend Claims 16 and 40 in order to advance prosecution. Applicant reserves the right to pursue Claims 16-55 in their original form in a continuing application.

As amended, Claim 16 recites, in part, “software stored in said memory, said software including a data retrieval portion and a display portion, said display portion and said data retrieval portion configured such that said user can select nutrition data for at least one of said various food items ; said display portion and said data retrieval portion also configured such that a user can select exercise data for at least one of said various exercise activities, said display portion and said data retrieval portion are configured such that said user can select said one of said various exercise activities by navigating with said user interface and said display through an exercise menu, said display portion and said data retrieval portion also configured such that said user can select said one of said various exercise activities by navigating with said user interface and said display through an exercise menu.” Claim 36 has been amended in a similar manner.

As amended, Claim 40 now recites, in part, “receiving a food item selection from said user for at least one food item by navigating with said user interface and said display through a nutrition menu” and “receiving an exercise data selection from said user for at least one exercise

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activity by navigating with said user interface and said display through an exercise menu." Claim 50 has been amended in a similar manner.

Applicant respectfully submits that the addition of the underlined language in Claims 16, 36, 40 and 55 should address the Examiner's rejection under the recapture doctrine.

New Claims

New Claims 56-74 are in condition for allowance because they depend upon allowable Claim 36 and they contain additional patentable subject matter. New Claims 75-85 are in condition for allowance because they depend upon allowable Claim 55 and they contain additional patentable subject matter. New Claim 86 is also in condition for allowance. New Claim 86 recites an interactive personal nutrition and exercise management tool that includes software further including a suggested weight portion for calculating a suggested weight based upon user entered values for sex, frame, lifestyle, height and age. The cited art does not disclose an interactive personal nutrition and exercise management tool with, among other things, the above noted limitation.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims and specification. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve such issue promptly.

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Respectfully submitted,

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